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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 1151

SAX and ROSE ELIZABETH ROHMER,
Petitioners,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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THE COURT PRESS, N. Y. C.

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1. The transfer of all serial rights of publication without any limitation of time, for a fixed sum, is not "fixed or determinable annual or periodical gains, profits and income" under Sec. 211(a)(1)(A) of the Internal Revenue Code, and hence is not taxable to the taxpayer Rohmer, a non-resident alien not engaged in business in the United States 5

2. Failure to review this case will encourage litigation in all circuits, not only as to future payments of this class, but also as to payments made by American citizens to aliens since 1936, without withholding, in reliance on the plain words of the statute 17

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IN THE

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OCTOBER TERM, 1945.

No. .

SAX and ROSE ELIZABETH ROHMER,
Petitioners,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Sax and Rose Elizabeth Rohmer, respectfully pray that a writ of certiorari issue to review an order, judgment and decree of the United States Circuit Court of Appeals for the Second Circuit, entered January 3, 1946, affirming the order of the Tax Court entered June 6, 1945. A timely petition for rehearing was filed, which was denied on January 25, 1946. A certified transcript of the record is furnished herewith in accordance with Rule 38, Par. 1, of the Rules of this Court.

Statement.

All the pertinent facts are set forth in the Tax Court's opinion (R. 11-18). In 1940, the taxpayer Sax Rohmer, a non-resident alien not doing business in the United States, transferred the American serial rights in his story "The Island of Fu Manchu" to Macfadden Publications, Inc., without limitation of time, for $10,000. He claims that said payment was not taxable, because (a) it was the proceeds of the sale of property and (b) because in any event it was not "fixed or determinable annual or periodical * * * income", which alone would be taxable to Rohmer under the 1940 Revenue Act. (See Appendix for pertinent provisions.)

Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, §240-(a), as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. §348-(a)). The date of the order, judgment and decree of the Circuit Court of Appeals for the Second Circuit to be reviewed was January 3, 1946, petition for rehearing denied January 25, 1946.

Question Presented.

Was the $10,000 payment to Rohmer for the serial rights "periodical" income under Sec. 211 (a)(1)(A) of the Internal Revenue Code?

Reasons Relied Upon for Allowance by the Court.

1. The Circuit Court of Appeals has decided an important question of Federal law which has not been,

but should be, settled by this Court, in that it has determined that non-periodical payments for serial rights of publication in the United States are taxable to non-resident aliens not doing business in the United States as "annual or periodical gains, profits and income" under Sec. 211(a)(1)(A) of the Internal Revenue Code.

2. Its decision further contains an express warning to the bar that contingent proceeds of sale are taxable to such aliens, in conflict with a decision of the Circuit Court of Appeals for the District of Columbia.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Judicial Circuit, sitting at New York, New York, commanding said Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court; that the order, judgment and decree of the Circuit Court of Appeals be reversed; and that your petitioners be granted such other and further relief as may seem proper.

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April 20, 1946.